

111TH CONGRESS  
1ST SESSION

# S. 1063

To amend the USEC Privatization Act to authorize the Secretary of Energy to pay affected participants under a pension plan referred to in the USEC Privatization Act for benefit increases not received.

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IN THE SENATE OF THE UNITED STATES

MAY 18, 2009

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the USEC Privatization Act to authorize the Secretary of Energy to pay affected participants under a pension plan referred to in the USEC Privatization Act for benefit increases not received.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “USEC Privatization  
5       Amendments Act of 2009”.

1 **SEC. 2. AUTHORIZATION AND DETERMINATION OF BENE-**  
2 **FITS FOR AFFECTED PARTICIPANTS.**

3 (a) **AUTHORIZATION FOR PAYMENT TO AFFECTED**  
4 **PARTICIPANTS.**—To the extent provided in advance in ap-  
5 propriations Acts, the Secretary of Energy (referred to in  
6 this Act as the “Secretary”)—

7 (1) shall establish a program under which the  
8 Secretary shall pay any affected participant de-  
9 scribed in subsection (b) a one-time lump sum pay-  
10 ment in an amount to be determined by the Sec-  
11 retary under subsection (c); and

12 (2) may contract for the procurement of infor-  
13 mation necessary to enable the Secretary to effec-  
14 tively carry out the provisions of this Act.

15 (b) **AFFECTED PARTICIPANT.**—For the purposes of  
16 this Act, an affected participant is a person described  
17 under section 3110(a)(6)(B) of the USEC Privatization  
18 Act (42 U.S.C. 2297h–8(a)(6)(B)).

19 (c) **DETERMINATION OF PAYMENT FOR AFFECTED**  
20 **PARTICIPANTS.**—

21 (1) **IN GENERAL.**—The Secretary shall pay an  
22 affected participant, pursuant to an application  
23 timely filed by such participant, a one-time lump  
24 sum payment equal to an amount which bears the  
25 same ratio to the total recoverable amount described  
26 in paragraph (2) as the actuarial present value of

1 the accrued benefits of the affected participant  
2 under the pension plan from which a transfer of  
3 plan assets and liabilities required under section  
4 3110(a)(2) of the USEC Privatization Act (42  
5 U.S.C. 2297h-8(a)(2)) was made (as of immediately  
6 before the transfer) bears to the actuarial present  
7 value of the accrued benefits of all affected partici-  
8 pants under the pension plan from which the trans-  
9 fer under such section was made (as of immediately  
10 before the transfer).

11 (2) TOTAL RECOVERABLE AMOUNT.—For pur-  
12 poses of this subsection, the total recoverable  
13 amount is an amount equal to the excess of—

14 (A) the present value of benefits that  
15 would have been accrued or accruable by all af-  
16 fected participants under the pension plan from  
17 which the transfer under section 3110(a)(2) of  
18 the USEC Privatization Act (42 U.S.C. 2297h-  
19 8(a)(2)) was made if such transfer had not oc-  
20 curred and if benefit increases had occurred, in  
21 connection with the transferred liabilities, under  
22 such plan equivalent to benefit increases that  
23 have occurred under such plan in connection  
24 with the other liabilities under such plan, over

1 (B) the present value of benefits accrued  
2 or accruable by all such affected participants  
3 under the pension plan to which the transfer  
4 under section 3110(a)(2) of the USEC Privat-  
5 ization Act (42 U.S.C. 2297h-8(a)(2)) was  
6 made.

7 (3) CONSIDERATIONS.—In determining a pay-  
8 ment under this section, the Secretary shall con-  
9 sider, with respect to the pension plan from which  
10 the transfer under section 3110(a)(2) of the USEC  
11 Privatization Act (42 U.S.C. 2297h-8(a)(2)) was  
12 made and the pension plan to which such transfer  
13 was made, benefits accrued as of the date of enact-  
14 ment of this Act and accruable through attainment  
15 of normal retirement age, assuming continued serv-  
16 ice under the plan until attainment of such age and  
17 the same rate of basic pay subject to increases re-  
18 flective of reasonably anticipated increases in the  
19 cost of living.

20 (4) SUCCESSOR PLANS.—For the purposes of  
21 paragraphs (2) and (3), any reference to the pension  
22 plan from which the transfer under section  
23 3110(a)(2) of the USEC Privatization Act (42  
24 U.S.C. 2297h-8(a)(2)) was made shall include a ref-  
25 erence to any successor to such plan (other than the

1 pension plan to which the transfer required by such  
2 section was made) if such successor plan received as-  
3 sets in excess of the actuarial present value of ac-  
4 crued benefits under such plan upon succession.

5 (d) PRO RATA REDUCTION OF PAYMENT.—The Sec-  
6 retary shall provide for pro rata reductions in payment  
7 amounts determined by the Secretary under subsection (c)  
8 to affected participants described in subsection (b) to the  
9 extent necessary to adjust for amounts provided in appro-  
10 priation Acts for purposes of the program under sub-  
11 section (a).

12 (e) DETERMINATION OF FINDINGS OF FACT.—The  
13 Secretary may make findings of facts and decisions as to  
14 the rights of any affected participant applying for a pay-  
15 ment under this Act.

16 (f) RULEMAKING.—Not later than 60 days after the  
17 date of enactment of this Act, the Secretary shall issue  
18 regulations to carry out this Act. Such regulations shall  
19 provide a requirement for applicants for payments under  
20 this Act to consent to the release of any information re-  
21 quested by the Secretary.

22 (g) PUBLIC NOTICE.—To the extent practicable, the  
23 Secretary shall provide notice to individuals who may be  
24 eligible to receive a payment under this Act.

1 (h) APPLICATION FOR PAYMENT.—To be eligible for  
 2 a payment under this Act, an affected participant shall  
 3 prepare and submit to the Secretary an application—

4 (1) not later than 240 days after the date of  
 5 enactment of this Act;

6 (2) in such manner; and

7 (3) containing such information as the Sec-  
 8 retary requires.

9 (i) TIMELY PAYMENTS.—To the extent practicable,  
 10 the Secretary shall determine and make a payment to an  
 11 affected participant not later than 180 days after such  
 12 participant's submission of an application for payment  
 13 under subsection (h).

14 (j) ELECTION TO TREAT PAYMENT AS ROLLOVER  
 15 CONTRIBUTION TO IRA.—

16 (1) IN GENERAL.—Any affected participant who  
 17 receives a payment under this Act may, at any time  
 18 during the 1-year period beginning on the day after  
 19 the date on which such payment was received, make  
 20 one or more contributions in an aggregate amount  
 21 not to exceed the amount of such payment to an in-  
 22 dividual retirement plan (as defined by section  
 23 7701(a)(37) of the Internal Revenue Code of 1986).

24 (2) TREATMENT OF CONTRIBUTIONS TO  
 25 IRAS.—For purposes of the Internal Revenue Code

1 of 1986, if a contribution is made to an individual  
 2 retirement plan pursuant to paragraph (1), then—

3 (A) except as provided in paragraph (3),  
 4 such contribution shall not be included in gross  
 5 income, and

6 (B) to the extent of the amount of such  
 7 contribution, such contribution shall be treat-  
 8 ed—

9 (i) as a distribution described in sec-  
 10 tion 408(d)(3) of such Code, and

11 (ii) as having been transferred to the  
 12 individual retirement account in a direct  
 13 trustee to trustee transfer within 60 days  
 14 of the distribution.

15 (3) SPECIAL RULE FOR ROTH IRAS.—If a con-  
 16 tribution is made under paragraph (1) to a Roth  
 17 IRA, such contribution shall be includible in gross  
 18 income and, unless the taxpayer elects not to have  
 19 this clause apply, such contribution shall be so in-  
 20 cluded ratably over the 2-taxable-year period begin-  
 21 ning with the first taxable year in which such con-  
 22 tribution is made.

23 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
 24 are authorized to be appropriated to the Secretary such  
 25 amounts as necessary to carry out this Act.

1 (l) HEARING AND JUDICIAL REVIEW.—

2 (1) HEARING.—

3 (A) IN GENERAL.—Upon request by any  
4 affected participant applying for a payment  
5 under this Act, who makes a showing in writing  
6 that such participant's rights may have been  
7 prejudiced by any decision the Secretary has  
8 rendered, the Secretary shall give such partici-  
9 pant reasonable notice and opportunity for a  
10 hearing with respect to such decision, and, if a  
11 hearing is held, shall, on the basis of evidence  
12 adduced at the hearing, affirm, modify, or re-  
13 verse the Secretary's findings of fact and such  
14 decision.

15 (B) REQUEST FOR HEARING.—Any request  
16 for a hearing under this subsection must be  
17 filed within 60 days after notice of a decision  
18 by the Secretary is received by the affected par-  
19 ticipant making such a request.

20 (C) SECRETARY.—The Secretary is further  
21 authorized, on the Secretary's own motion, to  
22 hold such hearings and to conduct such inves-  
23 tigation and other proceedings as the Sec-  
24 retary may deem necessary or proper for the  
25 administration of this Act.



1           (2) JUDICIAL REVIEW.—

2           (A) IN GENERAL.—Any affected partici-  
3           pant, after any final decision of the Secretary  
4           made after a hearing to which such participant  
5           was a party, irrespective of the amount in con-  
6           troversy, may obtain a review of such decision  
7           by a civil action commenced within 60 days  
8           after the mailing to such participant of notice  
9           of such decision or within such further time as  
10          the Secretary may allow.

11          (B) JURISDICTION AND VENUE.—An ac-  
12          tion under this Act shall be brought in the dis-  
13          trict court of the United States for the judicial  
14          district in which the affected participant plain-  
15          tiff resides, or where such plaintiff has a prin-  
16          cipal place of business, or, if such plaintiff does  
17          not reside or have a principal place of business  
18          within any such judicial district, in the United  
19          States District Court for the District of Colum-  
20          bia.

21          (C) JUDICIAL DETERMINATION.—The  
22          court shall have power to enter, upon the plead-  
23          ings and transcript of the record, a judgment  
24          affirming, modifying, or reversing the decision

1 of the Secretary, with or without remanding the  
2 cause for a rehearing.

3 (D) FINAL JUDGMENT.—The judgment of  
4 the court shall be final, except that it shall be  
5 subject to review in the same manner as a judg-  
6 ment in other civil actions.

7 (E) CHANGE IN SECRETARY.—Any action  
8 instituted in accordance with this Act shall sur-  
9 vive notwithstanding any change in the person  
10 occupying the office of Secretary or any va-  
11 cancy in such office.

12 (m) SECRETARY'S RESPONSIBILITY; NO THIRD  
13 PARTY LIABILITY.—

14 (1) SECRETARY'S RESPONSIBILITY.—The Sec-  
15 retary shall be responsible for all payments and  
16 costs under this Act, for reporting payments to af-  
17 fected participants and the Internal Revenue Service  
18 on Form number 1099R (or such other form as re-  
19 quired by the Internal Revenue Service) for income  
20 tax purposes, and for answering questions relating  
21 to the implementation of this Act for affected par-  
22 ticipants and applicants for payment. In no event  
23 shall the current or former employer of an affected  
24 participant or applicant be responsible for providing  
25 communication, making payments, reporting pay-

1       ments, answering questions, or providing calcula-  
2       tions.

3               (2) NO THIRD PARTY LIABILITY.—Nothing in  
4       this Act shall be deemed to impose any liability or  
5       cost, or authorize any claim against the operator of  
6       the Department of Energy’s uranium enrichment fa-  
7       cility in Paducah, Kentucky, or against any person  
8       or entity other than the Secretary.

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